

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Petition of Desert) DOCKET NO. 04-035-04
Power, L.P. for Approval of a Contract for)
the Sale of Capacity and Energy From its) ORDER APPROVING DESERT
Proposed QF Facilities) POWER'S QUALIFYING FACILITY
) CONTRACT

ISSUED: October 7, 2004

SYNOPSIS

The Commission approves the contract for the sale to PacifiCorp of electric energy and capacity from Desert Power's proposed Qualifying Facility.

APPEARANCES:

Edward A. Hunter, Attorney at Law Stoel Rives	For	PacifiCorp
Stephen F. Mecham Attorney at Law Callister Nebeker & McCullough	"	Desert Power
Michael L. Ginsberg Assistant Attorney General	"	Division of Public Utilities
Paul Proctor Assistant Attorney General	"	Committee of Consumer Services

PROCEDURAL HISTORY

On January 23, 2004, Desert Power, L.P. (“Desert Power”), pursuant to Utah Code Ann. §54-12-2, and Section 210 of the Public Utility Regulatory Policies Act of 1978 (“PURPA”), 16 U.S.C. §824a-3, petitioned the Commission to approve a contract for the sale of electric capacity and energy to PacifiCorp from Desert Power’s proposed Qualifying Facility (“QF”). In support of its petition, Desert Power filed the testimony of its consultant along with a proposed QF contract. Desert Power has an existing power production facility near Rowley, Utah and intends to construct, own, operate (as a QF) and maintain a facility for the generation of electric power with an estimated output of approximately 95 megawatts.

The Commission issued a Protective Order on March 23, 2004 followed by a Scheduling Order on March 24, 2004 setting this matter for hearing June 7, 2004 through June 9, 2004. On April 1, 2004, parties filed a list of contract issues. On April 14, the Division of Public Utilities (“Division”) submitted a letter indicating that the Division and the Committee of Consumer Services (“Committee”) would file testimony in the rebuttal round. PacifiCorp filed direct testimony on April 16, 2004. Desert Power filed supplemental direct testimony on April 19, 2004.

The schedule in this case was tied to resolution of the pending matter in Docket No. 03-035-14, *In the Matter of the Application of PacifiCorp for Approval of an IRP-Based Avoided Cost Methodology For QF Projects Larger than One Megawatt*, in which the Commission considered a method for providing indicative pricing for large QF

projects eligible for Schedule No. 38¹. The parties in Docket No. 03-035-14 (PacifiCorp, Desert Power, the Division, the Committee, UAE Intervention Group, US Magnesium, and the Utah Energy Office) entered into an unopposed stipulation, which the Commission approved by Report and Order dated June 28, 2004. Using an interim avoided cost method, the June 28th Order established capacity and energy indicative prices for purchases from QF projects exceeding Schedule 37 capacity limits under contracts with terms up to 20 years that PacifiCorp would enter into under specified conditions.

In order to allow PacifiCorp and Desert Power to complete negotiations of a long-term contract, parties requested that the hearing be rescheduled. In response, the Commission rescheduled the hearing in this docket by Orders dated June 4, 2004, June 18, 2004, and July 21, 2004. On July 12, 2004, the Commission granted US Magnesium's Petition To Intervene in this docket.

PacifiCorp and Desert Power reached agreement on all provisions of the contract, and, after further discussions with the Division and the Committee, presented the contract (although unsigned) to the Commission in a hearing on July 29, 2004. PacifiCorp, Desert Power, and the Division supported the contract. The Committee also supported approval of the contract with an amendment to Section 2.1, which the parties accepted. No party opposed approval of the contract. US Magnesium did not appear at the hearing.

¹ PacifiCorp's Rate Schedule 38 is available to QFs larger than the limits for Rate Schedule 37. Schedule 37 limits small power production facilities to 3 megawatts and cogeneration facilities to 1 megawatt.

On September 1, 2004, the Commission sent a letter to parties indicating that the contract did not appear to be consistent with the avoided cost method and indicative prices approved in its June 28, 2004 order in Docket No. 03-035-14 and that no evidence was presented supporting the deviation. The Commission invited parties to respond to the letter. A Technical Conference was held on September 17, 2004 to discuss the issues raised in the Commission's letter. On September 22, 2004, PacifiCorp filed responsive comments to the Commission's letter. On September 23, 2004, Desert Power submitted, in response to the Commission's letter, four late-filed exhibits reviewed and agreed to by PacifiCorp, Desert Power, the Division and the Committee. On September 30, 2004, the signed Power Purchase Agreement between PacifiCorp and Desert Power was filed with the Commission. The signed agreement includes the changes to Section 2.1 that the Committee provided in the July 29th hearing and to which the parties agreed.

DISCUSSION, FINDINGS AND CONCLUSIONS

At the July 29th hearing, PacifiCorp testified that the rates, terms and conditions of the Power Purchase Agreement with Desert Power are in accordance with the stipulation approved by the Commission's June 28, 2004 order in Docket No. 03-035-14. This stipulation provides, for an interim period, indicative energy and capacity prices for 20 year power purchase contracts from large Qualifying Facilities based on an interim avoided cost method. The stipulation states that nothing in it is intended to amend or cancel any provision of Schedule No. 38. Schedule No. 38 provides a requirement that PacifiCorp provide "indicative prices" for capacity and energy. It does not use the terms "avoided energy and capacity payments" as does the stipulation. We conclude that they are one and the same and use the terminology of Schedule No. 38 heretofore.

The approved stipulation limits QF contracts approved during the interim period to those that would provide power no later than June 1, 2007 and that would not exceed a 275-megawatt cumulative cap for all QF projects approved during the interim period. The approved stipulation also establishes a Task Force to develop a long-term avoided cost method for providing indicative prices and resolving other QF issues.

PacifiCorp testified that the transaction would be considered an operating lease and would have no debt impact on the Company's books. PacifiCorp further testified that the Desert Power generation plant has been self-certified with the Federal Energy Regulatory Commission ("FERC") as a QF and that scheduled power deliveries from the QF are planned to commence January 1, 2006. This date meets the June 1, 2007 requirement from the Commission's June 28, 2004 order in Docket No. 03-035-14 and the 95 megawatt size of the QF project, which is the first project since the Commission order, does not exceed the 275 megawatt cumulative cap.

Utah Code 54-7-1 encourages settlement of matters before the Commission. The QF contract negotiated by PacifiCorp and Desert Power and reviewed by parties prior to the hearing, was unopposed at the hearing.

Utah Code 54-12-1 encourages the development of cogeneration facilities. Utah Code 54-12-2 requires purchasing utilities to offer to purchase power from cogenerators at rates, terms and conditions established by the Commission. Evidence was presented that PacifiCorp is required to purchase power from the Desert QF in accordance with 54-12-2.

At the September 17th Technical Conference, Desert Power and PacifiCorp presented information (submitted as late-filed exhibits) to show the reasonableness of the

changes made to the indicative capacity prices previously approved by the Commission in Docket No. 03-035-14.

The historical evidence provided to demonstrate the relationship of inflation and PacifiCorp's avoidable operation and maintenance (O&M) costs consists of only one power plant and is un rebutted by any party. We therefore accept the evidence as the best available information to date and accept in this contract the deviation to the indicative pricing for Schedule No. 38 QFs approved in the stipulation. In order to ensure, in any subsequent proceedings where the issue arises, that this relationship is robust rather than an isolated incident, we direct the Task Force to further investigate this issue. The Task Force is to report back its conclusions in the context of proposing a long-term method for providing indicative pricing to QFs under Schedule No. 38. Additionally, and also in the context of developing a long-term method, we direct the Task Force to examine the effects on ratepayer neutrality of fixed versus indexed or variable QF pricing.

We conclude that the terms and conditions of the QF contract between Desert Power and PacifiCorp, including the prices to be paid for capacity and energy pursuant to the terms of that contract, are just, reasonable, and in the public interest. The negotiated contract that resolves this matter is just and reasonable in result.

The Commission order in Docket No. 03-035-14 approved a stipulation that established rates, terms and conditions for large Qualifying Facilities for an interim period based on an interim avoided cost method. The short term nature of the approved indicative prices and method, the implementation of a cumulative megawatt cap and the establishment of a Task Force indicate that parties believed that more time was needed to

develop better avoided cost information. This is necessary to ensure that future QF projects meet the ratepayer indifference standard. Further, stipulations often involve compromises of components of the package settlement and the Commission is reluctant to alter terms negotiated by the parties, particularly where there is no objection from the stakeholders. For these reasons, the rates, terms and conditions approved in this case, are not a precedent for future QF contracts.

ORDER

Wherefore it is hereby Ordered that the contract for the sale to PacifiCorp of electric energy and capacity from Desert Power's proposed Qualifying Facility is approved.

This Order constitutes final agency action on Desert Power's January 23, 2004, Petition. Pursuant to U.C.A. §63-46b-12, an aggrieved party may file, within 30 days after the date of this Order, a written request for rehearing/reconsideration by the Commission. Pursuant to U.C.A. §54-7-15, failure to file such a request precludes judicial review of the Order. If the Commission fails to issue an order within 20 days after the filing of such request, the request shall be considered denied. Judicial review of this Report and Order may be sought pursuant to the Utah Administrative Procedures Act (U.C.A. §§63-46b-1 et seq.) and the Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 7th day of October, 2004.

/s/ Ric Campbell, Chairman

/s/ Constance B. White, Commissioner

/s/ Ted Boyer, Commissioner

Attest:

/s / Julie Orchard
Commission Secretary
G#40769